IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WA.No. 1662 of 2007

(AGAINST THE JUDGEMENT IN WPC.37510/2003 Dated 20/03/2007)

APPELLANT/PETITIONER

M/S.CHARANGATTU COIR MANUFACTURING CO.
(P) LTD., KANICHUKULANGARA, P.B.NO.7,
CHERTHALA P.O.

BY ADV. SRI.B.S.KRISHNAN (SR.)
ADV. SRI.K.ANAND (A.201)
ADV. SMT.LATHA KRISHNAN

RESPONDENTS/RESPONDENTS
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1. THE PRESIDENT,
THE INDUSTRIAL EMPLOYEES SANGAM (BMS),
BMS OFFICE, CHERTHALA P.O.

2. THE PRESIDING OFFICER,
LABOUR COURT, KOLLAM.

R1 BY ADV. SHRI N. NAGARESH
BY SPECIAL GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1662 OF 2007

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Dated this the 20th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal arises out of the order passed by the learned single Judge in W.P.(C) No. 37510 of 2003 dated 20th March 2007. By the impugned order, the learned single Judge has upheld the orders passed by the Labour Court in I.D.No.39 of 1998 and thereby has rejected the Writ Petition.

2. The facts in brief are: The petitioner in the Writ Petition is the employer. It had called in question the correctness or otherwise of the award passed by the Labour Court in I.D.No. 39 of 1998. By the impugned award, the Labour Court had directed the employer/petitioner to reinstate the workman into service with full backwages.

3. Smt. M. Ajitha was working as a Typist in the petitioner's establishment. It is the case of the workman that she had applied for leave for one day and thereafter, she was admitted in the maternity home/hospital for the purpose of delivery of her child. The documents produced before the Labour Court would demonstrate that she was admitted in the maternity home/hospital on 14.08.1995. Since there was denial of employment by the petitioner, the workman had approached the re-conciliation officer for conciliation of the lis between the parties. On failure of conciliation proceedings, the workman had approached the State Government, to refer the dispute to the Labour Court for adjudication and decision. The State

Government, after considering the request made by the workman, had referred the following issue for consideration and decision of the Labour Court:

> *"Whether the alleged denial of employment of Smt.M. Ajitha, Typist from 13.11.1995 is justifiable ? If not, what benefit she is entitled to?"*

4. After receipt of the reference, the Labour Court had registered the same as I.D. No. 39 of 1998. The workman had filed her claim statement (through the Union which represented the workman in the proceedings before the Labour Court as well as before this court) before the Labour Court, inter alia contending that the employer had denied employment to her with effect from 13.11.1995, without any rhyme or reason. Therefore, the workman had requested the Labour Court to direct the employer to reinstate her into service with full backwages. After receipt of notice from the Labour Court, the employer had entered its appearance and had also filed their counter claim before the Labour Court. The Labour Court had raised the following issues for its consideration and decision:

> *"1) Whether the worker was denied employment as alleged.?*
>
> *2) To what relief, if any, the worker is entitled ?"*

5. The parties had adduced both oral and documentary evidence before the Labour Court . Exts. W1 series were marked by the workman and Exts. M1 to M3 were marked by the management. The Labour Court, after taking into consideration the oral evidence that was recorded and also the documentary evidence produced, has come to the conclusion that the workman had applied for leave for a particular day and thereafter she was

admitted in the maternity home/hospital for delivery of her child. After the expiry of three months, she had approached the employer to take her back to duty. The Labour Court had also come to the conclusion that the employer, without any reason whatsoever, had denied employment to the workman.

6. Having arrived at the conclusion that there was denial of employment, the Labour Court had directed the employer to reinstate the workman into service with full backwages. It is that order of the Labour Court was the subject matter of the Writ Petition.

7. The learned single Judge, after re-appreciating the evidence available on record, has come to the conclusion that the findings of the Labour Court cannot be termed as perverse and therefore, has rejected the Writ Petition. Aggrieved by the order so passed by the learned single Judge, the employer/petitioner is before us in this Writ Appeal.

8. Learned counsel appearing for the appellant would contend that the learned single Judge was not justified in arriving at the conclusion that it is the employer/petitioner, who had denied employment to the workman. Further, the learned counsel, would contend that while directing reinstatement of the workman into service, the court should not have directed the employer to pay full backwages to the workman, since there was delay by the workman in approaching the Labour Court. .

9. Per contra, the learned counsel appearing for the respondent justifies the award passed by the Labour Court as well as the directions issued by this court.

10. The matter was argued at length by both the parties. The findings and the conclusions reached by the Labour Court with the available evidence on record, in our opinion, cannot be termed as perverse. With a view to put quietus to the dispute or to have an amicable solution to the problem, we suggested to the learned counsel for the parties to the lis, to file appropriate memos before this court, agreeing for reinstatement of the workman into service with 50% backwages and to disburse whatever be the balance of arrears, that is payable to the workman under section 17B of the Industrial Disputes Act,1947 during the pendency of the Writ Petition. Learned counsel for the employer-petitioner as well as the respondent are agreeable to the suggestion made by us.

11. In view of the above, in our opinion, we need not to go into the further details of the case. Placing on record the memo filed by the counsel for the parties to the lis, the Writ Appeal is disposed of. Accordingly, the following:

O R D E R

i) The award passed by the Labour Court is modified to the extent that there shall be an order of reinstatement of the workman into service with 50% backwages from the date of denial of employment till the date of reinstatement.

ii) The employer/petitioner shall pay the entire balance of arrears, that

was payable under section 17 B of the Industrial Disputes Act, 1947, during the pendency of the Writ Petition, within a period of two months from today.

iii) The employer shall reinstate the workman into service within a period of one week from today.

iv) The workman/employee shall report for duty within the time granted by this court as aforesaid.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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